

Before the
Federal Communications Commission
 Washington, D.C. 20554

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MEDIA BUREAU

In the Matter of.

City of Tacoma

Emergency Petition for Waiver of
 47 C.F.R. § 76.1204(a)(1)

To: Chief, Media Bureau

EXPEDITED TREATMENT
 REQUESTED

CSR-7141-2

EMERGENCY PETITION FOR WAIVER OF 47 C.F.R. § 76.1204(a)(1)**1 Introduction and Summary**

Pursuant to 47 C.F.R. §§ 1.3 and 76.7, the City of Tacoma, d/b/a Click! Network ("The City") respectfully requests that the Commission grant a limited. emergency waiver of 47 C.F.R. § 76.1204(a)(1) to allow The City to continue to deploy the Motorola DCT-700² low-cost set top box until The City completes its conversion to a digital network. Time is of the essence in this matter. The City is in the process of transitioning

¹ Alternatively, The City requests that the Commission grant the requested waivers pursuant to 47 U.S.C. § 549(c) and 47 C.F.R. § 76.1207. Section 549(c) expressly authorizes the Commission to grant waivers of the integration ban for a set-top box:

The Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing by [an MVPD]...that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.

Similarly, Section 76.1207 of the Commission's rules provides:

The Commission "may waive a regulation adopted under this subpart for a limited time, upon an appropriate showing by [an MVPD]...that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.

² The City attaches the full specifications for the DCT-700 as Exhibit 1.

all its services to digital (except for a small Lifeline analog tier that will be received only by a limited number of subscribers), but has only 3,100 DCT-700s in stock for this transition. The City does not have sufficient funding to implement this digital transition if it must purchase enough non-integrated set-top receivers to deploy to all its subscribers. Accordingly, absent a waiver allowing it to continue to purchase and deploy additional DCT-700s. The City's digital transition will come to a halt. The City therefore respectfully requests that the Commission expedite consideration of this Petition.

If granted the requested waivers, The City will convert to a digital network for the vast majority of its subscribers by October 31, 2008. As explained below, The City's ability to complete this conversion is predicated on its continued ability to deploy the DCT-700.

Granting The City's requested waivers will benefit consumers and speed the digital transition in the markets served by The City, and will have no negative effect on the development of a competitive market for navigation devices. Conversely, without the requested waivers, The City will not be able to complete its digital transition in the foreseeable future.

We organize this waiver request as follows:

- Relief requested
- Background information on The City and its use of the DCT-700
- Justification for the requested waivers
- Justification for emergency relief
- Conclusion

II. Relief Requested

The City requests that the Commission grant a limited waiver of 47 C.F.R. § 76.1204(a)(1) for its deployment of the DCT-700 until October 31, 2008. This will allow The City to convert all but approximately 1,000 predominantly elderly Lifeline subscribers to all-digital services. The Lifeline subscribers will continue to receive a limited analog Lifeline tier containing only PEG and broadcast channels, and one shopping channel.

III. The City and its use of the DCT-700

Click! Network is operated by Tacoma Power, a utility operated by The City of Tacoma. The City overbuilt TCI (now Comcast) ten years ago and is a competitive MVPD serving franchise areas in Tacoma, Fircrest, Fife, University Place and Lakewood, WA. The City currently passes approximately 90,000 homes and serves approximately 24,500 cable television subscribers and 16,000 high-speed Internet subscribers. The City is awaiting the approval of a franchise to serve Pierce County, Washington. This will be a new build that will pass 10,000 homes. The City already has 3 of 20 planned nodes constructed and will be built out to 6,000 homes within the next 12 months.³

The City already provides extensive digital services, including high-speed Internet, the HD signals of every broadcast station carried on its system, and digital music. For some time, however, The City has been attempting to reclaim additional analog capacity so that it can offer new interactive features and more robust high-speed Internet services to all its franchise areas. The City currently offers multi-tiered Internet

³ Wikstrom Affidavit at ¶¶ 2-3.

services and had been planning to use some of the analog capacity reclaimed from its digital transition to add an entry level broadband tier and higher-speed tiers.⁴ To this end, in 2005 and 2006 The City obtained approval for a **budget** to fund its digital conversion (in the City of Tacoma, a municipal utility like ours must seek approval for its budget almost two years before it will actually need the **funds**).⁵ To date, The City has spent a year and over \$300,000 in equipment and labor to begin converting to a digital network. The City has 3,100 DCT-700s in stock, has installed all the headend and hub equipment to do a digital simulcast, and is now deploying digital simulcast to customers with at least one digital **receiver**.⁶

That said, budget approval was based on The City's plan to accomplish its conversion to digital services by placing at least one \$79 Motorola DCT-700 set-top box in each subscriber's home. This plan would allow most households in The City's franchise areas to have digital service available to at least one outlet in the home. The approved budget for a digital conversion will not cover digital receivers costing more than \$79.⁷

To The City's knowledge, no manufacturer has committed to providing a non-integrated digital receiver at a price approaching the price of the DCT-700, and the least-expensive non-integrated set-top box compatible with its network will be the

⁴ Even if it maintains an analog Lifeline tier, The City's digital conversion will allow it to reclaim more than enough capacity to provide these interactive features and broadband services. The City will also have ample capacity to continue to carry all of the digital services currently carried, including the HD signals of every broadcast station carried on its cable system. Wikstrom *Affidavit* at ¶ 10.

⁵ *Wikstrom Affidavit* at ¶ 5.

⁶ *Wikstrom Affidavit* at ¶ 5.

⁷ *Wikstrom Affidavit* at ¶ 6.

Motorola DCH-100, which will cost The City at least \$229, \$150 more per receiver. Deploying DCH-100s is therefore impossible for The City – the cost would far exceed The City's planned budget through 2008.⁸

If The City has no choice but to deploy Motorola DCH-100s after the July 1, 2007 deadline, it will not have the funding to complete its digital transition and will be prevented from reclaiming the much-needed analog spectrum. Accordingly, absent a waiver, The City's digital transition will stop unless and until the City receives additional funds. The next capital budget period is 2009 – 2010. The budget planning period will begin in mid-2008 and the finalization of that budget will not occur until December 2008. Because of the lead time required to receive approval on its budget, it will be at least March 2009 before The City can order enough non-integrated digital receivers to complete its digital transition.⁹

With the requested waiver, however, The City can commit to providing a digital service to at least one outlet in all but its Lifeline homes by October 31, 2008. Accordingly, The City requests a waiver of 47 C.F.R. § 1204(a)(1) until October 31, 2008.

If granted the requested waiver, The City will: (1) notify all of its analog customers of its plans to go digital at least six months in advance of the event; (2) submit a sworn declaration to the Commission confirming that such notice has been provided; (3) ensure that, at least six months prior to migrating to digital, it has inventory or has placed orders for enough digital receivers to ensure that each of its non-Lifeline

⁸ *Wikstrom Affidavit* at ¶ 7. The City will pay more than many small operators for the DCH-100 because it is unable to purchase the box through the National Cable Television Cooperative.

⁹ *Wikstrom Affidavit* at ¶¶ 8-9.

customers can view its digital programming on at least one analog television set per home; and (4) submit a sworn declaration to the Commission confirming its inventory of digital receivers.”

IV. Justification for Requested Waivers

The Commission has ample authority to grant The City’s requested waiver for good cause shown because the waiver will have a direct and immediate impact on The City’s ability to move the vast majority of its subscribers to a digital network by the February 17, 2009 DTV transition.

The Telecommunications Act of 1996 requires the Commission to encourage the deployment of advanced telecommunications capabilities, including high-speed broadband capabilities.” Accordingly, in its *BendBroadband Order*,¹² the Commission granted BendBroadband a conditional waiver¹³ for the DCT-700 because the waiver would allow BendBroadband “to focus its capital on other new digital services such as wireless, business services and other advanced services” and to ensure that its

¹⁰ *Wikstrom Affidavit* at ¶ 11.

¹¹ See Pub.L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, as amended Pub.L. 107-110, § 1076(gg), Jan. 8, 2002, 115 Stat. 2093, reproduced in notes to 47 U.S.C. § 153(a):

The Commission...shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ...

...
The term ‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed...broadband telecommunications capability...

¹² *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband, Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, Memorandum Opinion and Order*, CSR-7057-Z, CS 97-80. DA 07-47 (rel. January 10, 2007).

¹³ The Commission’s waiver for BendBroadband was conditioned on the company meeting certain deployment and customer notification milestones, all of which The City commits to meeting in this waiver request. See *BendBroadband Order* at ¶ 26; *Wikstrom Affidavit* at ¶ 11.

subscribers would be able to view digital broadcast signals after the end of the DTV transition.¹⁴ The Commission stated:

We believe that BendBroadband's migration to an all-digital system by 2008 ~~would allow it to reclaim~~ a considerable amount of spectrum within a clearly defined timeframe, which would enable it to provide consumers with advanced telecommunications capabilities, thereby furthering the goals of Section 706 [of the Telecommunications Act of 1996]...¹⁵

The Telecommunications Act of 1996 and the *BendBroadband* Order provide ample authority ~~for~~ the requested waiver: Like BendBroadband, a waiver will allow The City to move the vast majority of its subscribers to all-digital services within a clearly defined timeframe by using the inexpensive DCTJOO.¹⁶ This transition will allow The City to reclaim capacity to provide new interactive services and more robust high-speed broadband services.

Further, The City's digital transition will ensure that The City's cable subscribers will be able to view digital broadcast signals after the end of the DTV transition on February 17, 2009 because each subscriber will have at least one DCTJOO in his or her home, or access to analog Lifeline services.

¹⁴ *BendBroadband Order* at ¶¶ 24-25.

¹⁵ *BendBroadband Order* at ¶ 25.

¹⁶ The Commission has recognized the critical role that low-cost set-top receivers like the DCT-700 play in the digital transition. *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Second Report and Order*, 20 FCC Rcd. 6794 (2005) ("Second Report and Order") at ¶ 37 ("It is critical to the DTV transition that consumers have access to inexpensive digital set-top receivers that will permit the viewing of digital programming on analog television sets both during and after the transition. The availability of low-cost receivers will further the cable industry's migration to all-digital networks...").

Conversely, denial of the waiver will not benefit the public interest by assisting the development of a market for commercial navigation devices.¹⁷ The City's budget will not allow it to order non-integrated digital receivers.

In short, the requested waiver will ensure that (i) The City can reclaim its analog bandwidth by a date certain in order to provide new and innovative high-speed Internet services; and (ii) The City's subscribers will be able to view broadcast television signals after the DTV transition date." Denial of the waiver will have no corresponding public interest benefits.

V. **Justification for Emergency Relief**

Emergency relief is justified in this matter for the following reasons:

- **The requested relief is expressly provided for.** As shown above, the *BendBroadband Order, Second Report and Order*, and 47 C.F.R. §§ 1.3, 76.7 and 1207 all provide for a limited waiver of Section 76.1204(a)(1) for The City's use of the DCT-700.
- **The City and its customers will suffer irreparable harm if emergency relief is not granted.** The City cannot purchase DCT-700s from Motorola without a waiver. Without the DCT-700s, The City will need to stop the digital transition now underway because it will be at least two years until The City can order enough of the non-integrated receivers to complete its digital transition. Accordingly, without a waiver, The City will be unable to reclaim analog bandwidth to offer new interactive services and additional broadband Internet services and continue to provide the same level of HD signals to its subscribers.
- **No other parties will be harmed if the Commission grants the requested relief.** No parties will be harmed if the Commission grants a limited waiver for the DCT-700. Without the waiver, The City will need to reassess the plan for a digital transition and may be prevented from

¹⁷ The stated rationale for the integration ban is to assist the development of the market for commercial navigation devices. *See BendBroadband Order* at ¶¶ 2-3.

¹⁸ For these reasons, a waiver is **also** justified under 47 C.F.R. § 1207, which provides for waivers of Section 1204(a)(1) "to assist the development or introduction of a new or improved multi-channel video programming or other service offered over multi-channel video programming systems, technology, or products."

purchasing any replacements for the DCT-700 until March 2009. Accordingly, a waiver will not assist the development of a commercial market for navigation devices. Should a comparably priced, compatible, non-integrated receiver be available for purchase prior to October 31, 2008, Click! Network will cease purchasing DCT-700s.

- The public interest favors granting the requested relief. Congress and the Commission have worked hard to facilitate the digital transition on a national scale. For The City, the low-cost DCT-700 is the key to its transition to digital services. The public interest favors the continued availability of this low-cost set-top box until a comparably priced, system compatible, non-integrated receiver is available for purchase.


By granting emergency relief in this matter, the Commission can ensure that the digital transition will continue to move forward in The City's franchise areas. Without the emergency relief requested, deployment of digital services in these markets will stall.

VI. Conclusion

The City's plan to transition its subscribers to a digital network is dependent on the continued availability of the DCT-700. The City's digital transition will end before it begins if the Commission does not grant a limited waiver of the integration ban for The City's deployment of the DCT-700. For the reasons set forth above, The City respectfully requests that the Commission grant the requested relief.

The undersigned has read this Petition and to the best of her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and is not interposed for any improper purpose.

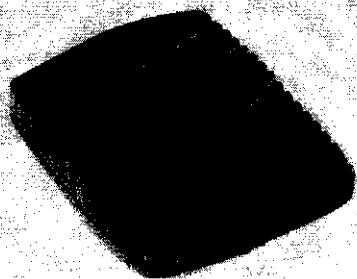
Respectfully submitted,

By: 
Cynthia M. Wikstrom
General Manager, Click!
Network/Tacoma Power
City of Tacoma

March 1, 2007

EXHIBIT 1

MOTOROLA DCT-700



DCT700 All-Digital Set-top

An interactive digital set-top with small size and big performance.

Motorola's DCT700 provides versatile interactivity in the all-digital network for expanded information and entertainment services.

The Motorola DCT700 is an all-digital set-top that provides you with the advantages of an all-digital network. Digital channels take up less room on your cable TV network. This results in increased bandwidth for more channels and services like high-definition TV (HDTV), electronic program guides (EPGs), pay-per-view (PPV), Video on Demand (VOD), and other on-demand information and entertainment services. The DCT700's capabilities are limited only by what your cable service provider offers. If your cable service provider eliminated analog channels in your area and replaced them with "all digital" channels, there would be even more room on the cable network system for additional services such as high-speed data, VOD, and high-definition content.

To decode the data used to transmit the digital channels, a separate set-top is required for each television in the home. The DCT700 provides digital channels to all your TVs through coaxial cable or analog (RCA-type) audio/video jacks.

Check with your local cable service provider for availability of the DCT700 in your area.

HIGHLIGHTS

- Supports services such as EPGs, PPV, and VOD
- Reclaims bandwidth allocated to analog channels
- Compatible with Motorola's award-winning secure MediaCipher® conditional access technology
- Two-way capability to enable interactivity
- Motion picture industry standard for coding and decoding video (MPEG-2)
- AC-3 standard for 5.1 Dolby® Digital Surround Sound

CONNECTEDMOTO





DCT700 All-Digital Set-top



Technical Specifications

STANDARD FEATURES

MPEG-2 Digital Video Processor
ATSC standard Dolby® Digital (AC-3) audio processor
ITU standard 64/256 QAM/FEC/enhanced adaptive equalizer
On-board real-time RF return (256 Kbps)
Bitmapped graphics display (4-/8-bit)
90–860 MHz tuner
DES-Based encryption/DCII access control
Digital diagnostics
Frequency agile 2.048 Mbps out-of-band data receiver
Macrovision® copy protection
IR support for remote control

STANDARD INTERFACES

RF remodulator output (ch. 3, 4)
Baseband video and audio outputs

OPTIONAL FEATURES

Motorola Universal Remote Control (DRC450)

To view our full line of Connected Home Solutions, visit our Web site at
broadband.motorola.com/consumers

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MOTOROLA and the Stylized M Logo are registered in the U.S. Patent and Trademark Office. DOCSIS is a registered trademark of Cable Television Laboratories, Inc. MediaCipher is a registered trademark of General Instrument Corporation. Moxi is a trademark of Digeo, Inc. All other product or service names are the property of their respective owners.



EXHIBIT 2

AFFIDAVIT OF CYNDI WIKSTROM

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
City of Tacoma)	CSR-_____
)	
Emergency Petition for Waiver of)	
47 C.F.R. § 1204(a)(1))	
)	
To: Chief, Media Bureau)	

AFFIDAVIT OF CYNTHIA M. WIKSTROM

I, Cynthia M. Wikstrom, make this affidavit based upon personal knowledge and a review of records, and can testify if necessary as to the truth of the matters asserted:

1. I have been employed by the City of Tacoma ("The City") as the General Manager of Click! Network since May 2006. In my capacity as General Manager, I am responsible for all areas of operation of the Click! Network cable system, including long-term planning, budgeting, and build-outs.
2. Click! Network is operated by Tacoma Power, a municipal utility governed by The City of Tacoma. Click! Network is a competitive MVPD serving franchise areas in Tacoma, Fircrest, Fife, University Place and Lakewood, WA.
3. Click! Network currently passes approximately 90,000 homes and serves approximately 24,500 subscribers. Click! Network also is in the process of obtaining a franchise to serve Pierce County, Washington.

This will be a new build that will pass approximately 10,000 homes.

The City already has 3 of the 20 planned nodes constructed, and will be built out to 6,000 homes within the next 12 months.

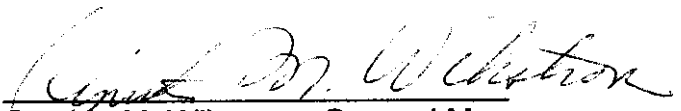
4. The City provides extensive digital services, including high-speed Internet, the HD signals of every broadcast station carried on its system, and digital music. For some time, however, The City has been attempting to reclaim additional analog capacity so that it can offer new interactive features and more robust high-speed Internet services to all its franchise areas. The City currently offers multi-tiered Internet services and had been planning to use some of the analog capacity reclaimed from its digital transition to add an entry level broadband tier and higher-speed tiers.
 5. To this end, in 2005 and 2006, The City obtained approval for a budget to fund its digital conversion (in the City of Tacoma, a municipal utility must seek approval for its budget almost two years before it will actually need the funds). To date, The City has spent a year and over \$300,000 in equipment and labor to begin converting to a digital network. The City has 3,100 DCT-700s in stock, has installed all the equipment to cablecast a digital simulcast, and is now in beta testing.
 6. The City pays \$79 for each Motorola DCT-700, and the approved budget was based on The City's plan to accomplish its conversion to digital services by placing at least one Motorola DCT-700 digital
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receiver in each subscriber's home (except for fewer than 1,000 predominately elderly Lifeline subscribers). The approved budget will not cover digital receivers costing more than \$79.

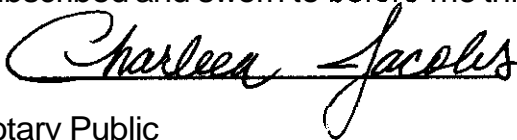
7. To The City's knowledge, no manufacturer has committed to providing a non-integrated digital receiver at a price approaching the price of the DCT-700, and the least-expensive non-integrated digital receiver compatible with its network will be the Motorola DCH-100, which will cost at least \$229.
8. If The City has no choice but to deploy Motorola DCH-100s after the July 1, 2007 deadline, it will not have the funding to complete its digital transition.
9. Accordingly, absent a waiver, The City's digital transition will stop unless and until the City can receive approval for an increased budget. Because of the lead time required to receive approval on its next budget period, it will be at least March 2009 before The City can order enough non-integrated digital receivers to complete its digital transition.
10. If the Commission grants The City a waiver of the July 1, 2007 deadline in 47 C.F.R. § 1204(a)(1) until October 1, 2008, The City can commit to converting the vast majority of its subscribers to digital services. Fewer than 1,000 predominately elderly subscribers would still receive a limited analog Lifeline tier consisting only of broadcast and PEG channels and one shopping channel. Even if it maintains this

analog Lifeline tier, The City's digital conversion will allow it to reclaim more than enough capacity to provide its planned interactive features **and broadband services**. The City will also have ample capacity to continue to carry all of the digital services currently carried, including the HD signals of every broadcast station carried on its cable system.

11. In summary, if granted a waiver of the July 1, 2007 deadline in 47 C.F.R. § 76.1204(a)(1) until October 31, 2008, The City will: (1) notify all of its analog customers of its plans to go digital at least six months in advance of the event; (2) submit a sworn declaration to the Commission confirming that such notice has been provided; (3) ensure that, at least six months prior to migrating to digital, it has inventory or has placed orders for enough digital receivers to ensure that each of its non-Lifeline customers can view its digital programming on at least one analog television set per home; and (4) submit a sworn declaration to the Commission confirming its inventory of digital receivers.
12. The facts set forth in the foregoing Affidavit are true to the best of my knowledge and belief.


Cynthia M. Wikstrom, General Manager
Click! Network/Tacoma Power
City of Tacoma

Subscribed and sworn to before me this 23 day of February, 2007.


Notary Public

